

REMARKS

Claims 1-20 are currently pending. Subject matter was indicated as allowable in paper 6. That indication was withdrawn in paper 9 based on new grounds of rejection. Applicants traversed the new grounds of rejection in the Amendment filed January 21, 2004. That grounds for rejection was withdrawn in paper 11. However, the Examiner has asserted further new grounds for rejection. Applicants respectfully traverse the new grounds for rejection for reasons stated below. Applicants request that the claims previously indicated as allowed be allowed and that all claims in this case be allowed so that it may pass to issue.

Claim Rejections – 35 U.S.C. §112

Applicants have made minor changes to the claims to clean informalities noted by the Examiner. These changes are not intended to alter the scope of the claims.

Applicants have amended claim 2 to replace the phrase “at least one” with the indefinite article “a.” This change also is not intended to alter the scope of the claim. Applicants disagree with the Examiner’s characterization that a fault tolerant protocol stack must be implemented by selecting one protocol from a stack of multiple protocols for creating a stack that contains several protocols within the stack. As used in the claim, the term is not tied to a specific implementation of a fault tolerant protocol stack. For example, the application at page 5, lines 17-27 describes that when devices communicate over a network according to a set protocol, the receiving device expects to receive certain types of information at certain times as defined by the protocol. The fault tolerant protocol stack allows the diagnostic unit to continue communicating with the subscriber terminal even if that protocol is not followed. For example, if a protocol calls for the subscriber terminal to provide a IP address but does not, the diagnostic unit will provide the address instead such that communication might continue.

Claim 3 has been amended to expressly state what was previously implied in the claim. Specifically at the diagnostic unit may communicate with the subscriber even when the subscriber is unable, for some reason, to communicate over the network with the selected network element.

Claim Rejections – 35 U.S.C. §102 Based on Caswell, et al.

Applicants respectfully disagree with the rejection based on Caswell. As understood Caswell relate to a method of diagnosing faults as is claimed. Caswell seems to relate to a method of gathering and organizing fault information. Caswell does not teach any specific method of diagnosing a fault. For example, note that Column 9, line 54-56 expressly states that only known test routines are run.

The Examiner states that diagnostic terminal 106 or diagnostic servers 120 and 130-132 might be a diagnostic unit as is claimed. However, diagnostic terminal 106, as understood, is the interface to the diagnostic system to be used by a network operator or service personnel. Communication to the diagnostic servers 120 and 130-132 are through this interface. Neither the diagnostic terminals nor diagnostic servers are understood to provide a diagnostic website through which the diagnostic unit receives a communication from a subscriber experiencing a problem with a network. As understood, network service personnel inputs information about faults through the diagnostic terminal 106. The diagnostic terminal 106, therefore, does not meet the claimed limitation of determining with a diagnostic unit configuration information of said subscriber terminal from portions of said communication generated by the subscriber terminal.

The dependent claims add further reasons for patentability. For example, claim 5 recites forwarding configuration information electronically to a support operator. As understood this is the reverse of what would happen in Caswell. A support operator enters information through diagnostic terminal 106, which is then forwarded to a diagnostic server. To the extent configuration information were obtained at all in Caswell it would go from the support operator to the diagnostic server rather than in the direction as claimed.

Applicants disagree that the reference teaches the features stated by the Examiner. For example, the Examiner points to figures 10-12 and Column 11, last paragraph for teaching prioritizing steps as taught in claims 15 and 16. However, Applicants see only mention of an unintelligent diagnostic system. There is no reference to prioritizing as recited in the claim.

Claim Rejection – 35 U.S.C. §103 Based on Caswell and Schwaller

The Examiner rejects dependent claims 2, 3, 6 and 12 based on this combination of references. As described above, Caswell does not teach the limitations of independent claim 1.

Even when combined with Schwaller, the combined references do not teach all of the features of claims 2, 3, 6 or 12 for the reasons given above. Schwaller does not provide a teaching of the missing elements.

As understood, Schwaller relates to a test instrument that generates network traffic. It is intended to simulate a user. Schwaller therefore lacks any teaching of a diagnostic unit with a diagnostic website that can communicate with a user. Though Schwaller refers to having multiple protocols, none is understood to be based on a fault tolerant protocol stack that allows communication between a subscriber and the diagnostic unit. Further, because Schwaller does not teach communication with subscriber at all, the claimed features would not be taught or suggested by the reference.

As to claim 12, the reference is not understood to teach communication with a subscriber and, therefore, does not teach or suggest negotiating a protocol between the subscriber and a diagnostic unit.

As to claims 17, Applicants disagree that Caswell teaches a diagnostic unit that operates according to the claimed method. For example, the Examiner refers to Column 8, lines 33-47 to teach the claimed element of receiving with said diagnostic unit a communication from a subscriber unable to communicate with the desired network element. As understood, that passage is actually referring to a service personnel typing information into a computer terminal. Therefore, does not teach the claimed step. Further, the reference does not teach communication between the subscriber and the diagnostic unit or between the diagnostic unit and a selected network element. The reference also does not show further details of the claim such as “sending indication of the data received from the subscriber to the selected network element in the protocol consistent with the network element protocol.”

Schwaller does not teach or suggest these missing limitations. As described above, Schwaller relates to a test instrument that simulates load on a network. It does not teach or suggest any of the steps involving communication with a subscriber.

Claim 19 similarly contains limitations that are not shown or suggested in any of the references. Neither reference teaches a diagnostic unit that accepts data from a subscriber in a source protocol inconsistent with a network element protocol and establishing a communication

with the subscriber and sending an indication of the data received from the subscriber to the selected network element in a protocol consistent with the network element protocol.

Claim Rejection – 35 U.S.C. §103 Caswell and Schwaller and Stephanou

Claims 13 and 14 are rejected under this combination of references. Claims 13 and 14 depend from claim 1. As described above, the references do not teach the limitations of claim 1. Applicants disagree that Stephanou teaches any of the missing limitations or that it teaches the further limitations of claim 13 and 14. As understood, Stephanou relates to a system in which help requests from a user are directed to human experts. Applicants contend that there is no teaching or suggestion to combine that reference with Caswell or Schwaller. Applicants further contend that none of the references teach determining configuration information of a subscriber terminal from portions of a communication generated by the subscriber terminal in conjunction with either authenticating a password for an ISP or sending and receiving emails.

CONCLUSION

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,
Peter H. Schmidt, et al, Applicant(s)

By: 

Edmund J. Walsh, Reg. No. 32,950
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210-2211
Telephone: (617) 720-3500

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